

D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERT AINBINDER, CECILIA MACKIE,

Plaintiff,

-against-

THE MONEY CENTER FINANCIAL GROUP, INC.,
NATHAN HINGSON, MICHAEL DEMCHAR,
MICHAEL DESPOSITO, MGM CAPITAL,
MARGARET DESPOSITO, MICHAEL HARMON,

Defendants.
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FEUERSTEIN, J.

ORDER

10-CV-5270 (SJF)(AKT)

FILED

IN CLERK'S OFFICE
U S DISTRICT COURT E D N Y

★ JAN 23 2014 ★

LONG ISLAND OFFICE

On November 16, 2010, plaintiffs Cecilia Mackie ("Mackie") and Robert Ainbinder (collectively, "plaintiffs") commenced this action against MGM Capital ("MGM"), Margaret Desposito ("Desposito"), Michael Harmon ("Harmon"), and four (4) other defendants. [Docket Entry No. 1]. On March 1, 2013, plaintiffs moved for default judgment against Harmon [Docket Entry No. 97], Desposito, and MGM [Docket Entry No. 88]. Now before the Court is the Report and Recommendation of Magistrate Judge A. Kathleen Tomlinson dated January 2, 2014 (the "Report"), recommending that: (1) plaintiffs' motions for default judgment be denied; and (2) plaintiffs be granted thirty (30) days to amend their complaint. [Docket Entry No. 115]. Mackie filed objections to the Report. [Docket Entry No. 118]. For the following reasons, the Court accepts Magistrate Judge Tomlinson's Report in its entirety.

I. Standard of review

Any portion of a report and recommendation on dispositive matters to which a timely objection has been made is reviewed by the district court *de novo*. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. *See Thomas*

v. *Arn*, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a magistrate judge on a dispositive matter to which no timely objection has been made, the district judge need only be satisfied that there is no clear error on the face of the record. *See* Fed. R. Civ. P. 72(b); *Johnson v. Goord*, 487 F. Supp. 2d 377, 379 (S.D.N.Y. 2007), *aff'd*, 305 F. App'x 815 (2d Cir. Jan. 9, 2009); *Baptichon v. Nevada State Bank*, 304 F. Supp. 2d 451, 453 (E.D.N.Y. 2004), *aff'd*, 125 F. App'x 374 (2d Cir. Apr. 13, 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

II. Discussion

The Court has considered Mackie's objections to the Report. The objections do not raise any valid substantive or procedural objections to the Report. Upon review, the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts Magistrate Judge Tomlinson's Report and Recommendation in its entirety. Plaintiffs' motions for default against Harmon, MGM, and Desposito are denied. Plaintiffs are granted leave to amend their complaint to cure the deficiencies in the allegations against Harmon, MGM, and Desposito within thirty (30) days from the date of entry of this Order.

In accordance with Rule 77(d) of the Federal Rules of Civil Procedure, the Clerk of Court shall serve a copy of this order upon all parties, including mailing a copy of this order to the *pro se* plaintiffs, and shall record such service on the docket.

SO ORDERED.

s/ Sandra J. Feuerstein

Sandra J. Feuerstein
United States District Judge

Dated: January 23, 2014
Central Islip, New York